

HOUSE JOINT RESOLUTION NO. 21

INTRODUCED BY J. SINRUD

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AFFIRMING THE STATE OF MONTANA'S JURISDICTION OVER ROADS AND RIGHT-OF-WAYS ON PUBLIC LAND WITHIN ITS BORDERS AS GRANTED TO MONTANA BY THE U.S. CONGRESS IN 1866.

WHEREAS, no power was delegated to the federal government in the U.S. Constitution with which it may govern land, thus improvement to land within states is entirely a function of the retained sovereignty of states; and

WHEREAS, Article IV, section 3, clause 2, of the U.S. Constitution clearly states that the federal government was given no legislative power with which it might prejudice the claims of sovereign states, including the sovereign claim of states to the internal system of their roads and right-of-ways; and

WHEREAS, the U.S. Supreme Court, in *Withers v. Buckley*, 61 U.S. 84 (1857), affirmed that roads are a component or instrumentality of sovereign states; and

WHEREAS, Revised Statute 2477 of 1866 reads "the right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted"; and

WHEREAS, the grant was unconditional with the sole exception that it applies only to unappropriated public land, and it is a grant for a single purpose; and

WHEREAS, the grant contains no reversionary clause; and

WHEREAS, the grant contains no requirement for specific performance; and

WHEREAS, the grant plainly constituted divestiture, by the federal government, of a portion of its property right upon public lands; and

WHEREAS, the grant was not a physical thing; rather, the grant was a power to construct public highways over unreserved public land; and

WHEREAS, a "grant" is a grant and not an offer; and

WHEREAS, a federal study of jurisdiction over federal areas within states found that a grant is accepted unless declined, in accord with a principle in law that states "a proffered benefit is accepted unless its nonacceptance is demonstrated"; and

WHEREAS, the U.S. Supreme Court, in *Fletcher v. Peck*, 10 U.S. 87 (1810), stated that "A grant, in its

own nature, amounts to the extinguishment of the right of the grantor, and implies a contract not to reassert that right. A party is, therefore, always estopped by its own grant"; and

WHEREAS, Fletcher v. Peck also affirmed that "A grant is a contract executed."

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State of Montana affirm jurisdiction over roads and right-of-ways on public lands within its border as granted by Revised Statute 2477 and that the jurisdiction include types of uses allowed on roads and right-of-ways.

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